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CURRENT TOPICS

Jury Disagreements

THE LORD CHIEF JUSTICE re-opened a great controversy in his speech on the swearing-in of the new LORD MAYOR before the judges of the Queen's Bench Division on 9th November. He said that it was an unfortunate fact that failures of juries to agree had of late been more frequent than formerly. It was hardly ever justifiable for the prosecution to be abandoned unless there had been at least two disagreements, though the cost of successive trials might be very heavy. Might it not be worth considering, his lordship continued, whether the time had not come for an alteration in the law so that a majority verdict might be returned both in civil and criminal cases? If the dissentients were not more than one or two would there be any real risk of injustice? In Scotland majority verdicts were, and for centuries had been, allowed. Another possible change that might be considered was the reduction in the number of jurors from twelve to seven, as was done in the war except for capital cases. He doubted, however, whether a majority verdict could be taken from so small a number. One other matter for consideration was whether, in the event of a juror or jurors having to be discharged for illness or any other cause, the court should not of its own motion have power to allow the case to proceed, provided the jury were not reduced below a certain number. A prompt criticism of these suggestions came from the pen of Sir TRAVERS HUMPHREYS in a letter in *The Times* of 11th November in which he quoted the late Lord Halsbury and the late Sir Harry Poland, K.C., as saying that the right of an accused person not to be deprived of his liberty until proved guilty by a unanimous verdict of a jury was part of the unwritten constitution of the country, and as adding that "a jury is always right." He doubted whether there had been a serious increase in the number of disagreements, although the Press reported them more, regarding them as news. He also thought that the number seven was a dangerously low minimum, particularly in country districts.

Costs against Legally-Aided Plaintiffs

THE injustice to defendants who obtain orders for costs with a determination of nil liability against legally-aided plaintiffs has been more than once the subject of comment in these columns and elsewhere. In *Hanratty* v. *Rogers* (*The Times*, 11th November, 1954) judgment was given for the defendant after a five days' trial before HALLETT, J., and a jury. The action had been brought by the plaintiffs, with the assistance of legal aid, for damages for being bitten by an Alsatian bitch which they alleged was ferocious and mischievous and accustomed to attack mankind, to the knowledge of the defendant. The jury gave answers to questions relating to these matters which were unfavourable to the plaintiffs, and, on quantum, found £135 17s. damages for the female plaintiff and £7 7s. for the male plaintiff, her husband. One hundred and fifty pounds had been paid into court. Giving judgment for the defendant with costs, Hallett, J., determined the plaintiffs' liability for those costs

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at nil, the plaintiffs being legally aided with a nil contribution. He added that the Legal Aid Scheme was often a case of "Heads I win, tails you lose" and that this was rather a striking example of a legally-aided person who brought an action at the public expense and refused all reasonable offers. Mr. A. A. MARTINEAU, in a letter in *The Times* of 15th November, said that *Hanratty's* case disclosed a new terror where payment was made into court of a reasonable sum. "Is not this one of the blemishes in the Legal Aid Scheme which those responsible for the scheme could and should remove?" asked Mr. Martineau. A reply to that question should not be delayed.

Rent Tribunals and the Housing Repairs and Rents Act

A MINISTRY of Housing and Local Government memorandum to rent tribunals draws attention to cases where there has been simultaneous application to the tribunal under s. 24 and s. 40 of the Housing Repairs and Rents Act, 1954. Tribunals, says the memorandum, have apparently given their determination under s. 24 first and under s. 40 second, that is to say, they have given their determination under s. 24 in respect of the old recoverable rent before the increase under s. 40 is added. The effect of the tribunal's determination under s. 40, however, where they grant an increase in rent, is to change the recoverable rent for the premises and, where they grant an increase in respect of contractual services, to change also the amount which the landlord might claim that he ought to be allowed to deduct under s. 24 of the Act. The Minister's considered views on the matter, although not binding on tribunals, are then set out in the memorandum in the following words: "According to the true intent and meaning of s. 24 (3) (*b*) the expression 'rent recoverable for the period in question' means the rent (including any increase of rent under s. 40) which, apart from any repairs increase, will be recoverable by the landlord on and after the date on which a demand for repairs increase becomes effective. Accordingly, it is the part of that rent which represents payment for furniture or services which the tribunal are required to determine. It follows, if there is also an application from the landlord before the tribunal under s. 40, that they should determine this application before giving a determination under s. 24. If there is no application under s. 40 before the tribunal, they should enquire whether there is an agreement under s. 40, and if so, the amount of the sum agreed thereunder. If the tribunal were to make a determination under s. 24 before there had been an agreement or determination under s. 40, and such an agreement or determination were subsequently made, the s. 24 determination could have no application to the changed circumstances. The tribunal would then have to entertain any further application which was made to them by either landlord or tenant, after the increase of rent under s. 40 had taken effect, for a further determination under s. 24 in relation to the increased rent."

Advice on Bonus Allotments

SOLICITORS who are concerned in drafting circular letters from companies to their shareholders, dealing with bonus allotments, etc., are asked in the November issue of the *Law Society's Gazette* to include solicitors in the categories of persons mentioned in such circulars as worthy of consultation in addition to stockbrokers and bankers. It is pointed out that if in any case a solicitor feels that he is not competent to give the advice sought, he can always himself refer to a stockbroker or a banker.

Solicitors' and Barristers' Lecture Fees

IT was not thought necessary in the years before the last war for either The Law Society or the General Council of the Bar to concern themselves with the rate of payment which junior members of the profession were obliged to accept for part-time lecturing work in commercial and technical colleges. These rates were in most cases as low as 14s. 8d. per hour, 22s. for two hours and 33s. for three hours. Since the war, notwithstanding a threefold increase in the cost of most other things, only a few shillings have been added to these fees. Nevertheless, the London County Council, the Association of Municipal Corporations, the County Councils Association, and the Association of Education Committees have declined to negotiate with the General Council of the Bar and The Law Society in the matter of fees payable to barristers and solicitors who give part-time lectures in legal subjects at commercial and technical colleges. The Bar Council have now agreed with The Law Society that the Bar should decide whether it should be made a breach of etiquette for a barrister to lecture for a fee of less than a guinea and a half per hour (on the assumption that solicitors will be made subject to an equivalent rule). This question was to be considered at a meeting of barristers interested on 17th November. It would be a disaster to the cause of adult education if legal subjects were left to be taught by unqualified or inappropriately qualified lecturers. It seems, however, that the only way of making the authorities realise that even junior members of the profession should not be expected to provide their services at a net loss is to withdraw those services until fees are provided which will more effectively contribute towards their rent and other expenses.

Sir Douglas Gibbon, M.C.

A LETTER which will have given pleasure far beyond the circle of those who knew Sir DOUGLAS GIBBON in their professional appearances before him as Chief Taxing Master appears over his name in the November issue of the *Law Society's Gazette*. It is full of expressions of gratitude to the profession, their managing clerks, and his own clerks. The occasion of the letter is Sir Douglas's retirement from the office of Chief Taxing Master as from 4th October last, having been appointed a taxing master by Lord Birkenhead in 1933. Of the legal profession he wrote: "They are, to my knowledge, a very generous body of men giving their services freely in aid of charitable causes and needy persons and I have had abundant experience of their goodwill and support." To managing clerks he paid special tribute: "They are the most frequent protagonists in the office and every Master relies on their candour and honesty in presenting a case and, in my experience, has no cause to regret doing so." He also acknowledged help from "a wonderful succession of principal and other clerks." Sir Douglas should rest assured that the good wishes and friendly feeling the profession have shown him in the past will follow him in his retirement, for it will be difficult to forget the high quality of his work, as well as the understanding and consideration which he brought to it.

"The Law in Action"

THE sense in which it is desirable for the law to remain a "mystery" is a restricted one. So many and so various are the fresh complexities which every day are encountered by those who practise the law, so fine, often, are the new distinctions which shape themselves as much from the very diversity of the transactions of modern life as from any tortuous ingenuity of the legal mind, that, without subscribing wholly

to Professor FITZGERALD's call for self-imposed specialisation by means of partnership, one may confess a need for an ever firmer grasp of principle and an ever wider search of the digests before confident advice can be tendered. Those who understand do not question that the process of advising clients and of negotiating and conducting legal transactions and proceedings will always be the fit subject of a "mystery" in the old sense of a craft of skill. There should be nothing of necromancy about it, however. It can do nothing but good for the educated lay public to be given an insight into the rationale of the process, into the peculiar logic of the living law and its trends which can influence the technique of the practitioner almost as powerfully as they affect the affairs of the community as a whole. We are glad to notice the continuance of a most helpful series of talks broadcast in the B.B.C.'s Third Programme under the title of "The Law in Action" which appears to us to furnish to its listeners just that lucid explanation of the principles of current leading cases and statutes which the cultured layman ought to have at his disposal if the relation between life and law is to be properly appreciated.

Take It or Leave It

ONE such recent talk dealt with "Freedom of Contract." Here indeed is a topic any discussion of which throws boldly into relief the masterful effect of commercial practice upon the legal rights and obligations of the ordinary citizen. Freedom of contract still exists, no doubt, between equals, but while there is still equality before the law, there is the greatest disparity in practical bargaining power between the purveyors of quasi-essential services, such as laundering and process-cleaning, and their intending customers. Trade combinations have standardised conditions of contract which the small customer must either accept or do his own cleaning. The would-be passenger on public transport is even less able to make a special bargain. When one considers the case of electricity or gas or water supply, it seems that the more "essential" the service, the more exclusive and predetermined is the only course open to the individual who requires it, and the more illusory his freedom of negotiation. We do not here, of course, impeach the fairness of any particular set of conditions. The point is one of principle. It is apparent from some of the cases to which the broadcast speaker referred that the courts are alive to the situation, but they cannot of course go behind concluded agreements. And the statutory commission to standardise the more commonly needed forms of contract which has been suggested in some quarters would not bring us back our lost liberty of dealing. Rather it would recognise its permanent eclipse.

Service Law Revision

IN approving the recommendations contained in the recent reports of the Select Committees on the Army Act and Air Force Act the Commons on 12th November also approved the promise on behalf of the Government to introduce three Bills early in the next session, one for the Army, one for the Royal Air Force, and one a transitional measure. Sir PATRICK SPENS, who was chairman of the committee, moved the resolution approving the reports, and said that they contained a full draft of a new Army Bill and a new Air Force Bill which embodied the unanimous recommendations of the committee. They had tried to produce a new code for the forces in modern circumstances, doing away with anything which would hinder enlistment and the continuance of long-term contracts. He also said that they had decided to recommend that new legislation in the first instance should be enacted for twelve months, and should be renewable annually for the next four years by substantive resolution of both Houses. At the end of the fourth year a new Bill would take the place of the existing Act. That would enable the House to have not only a general debate each year on the Estimates but also on the substantive resolution to renew the Army Act for another year.

LEGAL AID: COSTS IN THE COUNTY COURT

AT present the Legal Aid and Advice Act, 1949, does not apply to actions commenced in the county court. However, a considerable number of legal aid actions commenced in the High Court are being remitted to the county court for trial, and in those actions the order for solicitor and client costs is made in the county court and the taxation of those costs takes place in the county court.

It has been held that an order for the taxation of the assisted person's costs should be made in every case, the court having no discretion in the matter (*Page* v. *Page*; *Metcalf* v. *Wells* [1953] Ch. 320; 97 SOL. J. 150).

In remitted actions in the county court the order made by the county court judge would be an order for the assisted parties' costs "to be taxed as between solicitor and client in accordance with the Third Schedule to the Legal Aid and Advice Act, 1949, on the High Court scale to remission and on the county court Scale 3 thereafter."

The taxation under this order, therefore, takes place in the county court in accordance with the County Court Rules and the practice of the county courts.

It is the writer's experience that many solicitors do not fully appreciate this position and, by reason of that non-appreciation, often fail to take the necessary steps to ensure that they recover on taxation costs to which they may be justly entitled, provided they make the necessary application to the judge when the order for taxation is made.

Paragraph 4 (1) of Sched. III to the Legal Aid and Advice Act provides that the costs shall be taxed according to the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested.

Paragraph 4 (2) of Sched. III (and this is the paragraph peculiarly applicable to taxations in the county court) provides as follows:—

> (2) The reference in the foregoing sub-paragraph to the rules applicable on such a taxation as there mentioned, in relation to proceedings in a county court, includes in particular paragraph (*e*) of s. 184 of the County Courts Act, 1934.

Section 184 (*e*) of the County Courts Act, 1934, provides as follows:—

> (*e*) On the taxation of any costs or bill of costs, the amount to be allowed in respect of any item relating to proceedings in a county court shall not exceed the amount which would have been allowed in respect of that item as between party and party in those proceedings, having regard to the nature of the proceedings and the amount of the claim and counter-claim (if any) therein.

Thus the combined effect of para. 4 (2) of Sched. III, *supra*, and s. 184 (*e*) of the County Courts Act is that the county court registrar, on taxation of the assisted person's solicitor

and client costs, cannot, whatever may have been the amount or value of the work done by the solicitor, allow more in respect of any item in the bill than the maximum amount allowed in the appropriate county court scale for that item.

The scale item chiefly affected is, of course, that omnibus item, item 6, " preparing for trial of action or matter," which covers substantially all the work done by the solicitor in preparing for trial, for which the maximum fee allowed by the scale is £15.

Some solicitors seek to overcome this hurdle by making a separate charge, in that part of their bill relating to costs in the High Court before remission, of " Part Instructions for Brief in the High Court."

It is submitted that this practice is wrong. Appendix B to the County Court Rules, which sets out the scales of costs, contains certain notes, and under the heading " Notes to Items 6, 7 and 8 " appears this note :—

> *Note* 2.—In proceedings transferred from the High Court item 6 includes instructions for brief in the High Court or any charge in lieu thereof.

The result of this note, therefore, is that no more than the maximum of £15 can be allowed on taxation for all the solicitor's work of preparing for trial both in the High Court and county court.

If this were the end of the matter, it would be clear that very grave hardship would be inflicted on the solicitor, who would find himself in the position of being unable to recover from the Legal Aid Fund adequate remuneration for his professional services.

Fortunately the matter does not end there if the appropriate steps are taken by the solicitor. Order 47, r. 21(2), of the County Court Rules provides as follows :—

> (2) Where the costs of any proceedings are on scale 2 or scale 3 and the judge is satisfied from the nature of the case or the conduct of the proceedings that the costs which may be allowed may be inadequate in the circumstances, he may direct that the registrar, on taxation, shall not be bound by the items appearing in the scale in respect of the items specified in the next succeeding paragraph.

The items specified in the next succeeding paragraph are items 1, 2, 3, 6, 7, 27 and 30.

This article is intended to deal only with item 6. Consideration, therefore, need not be given now to the effect of this rule with regard to the other items specified.

If, therefore, a certificate under Ord. 47, r. 21 (2), is obtained from the judge, the registrar, on taxation, is not bound by the maxima in regard to any item to which the certificate relates ; he is free to allow any sum which in his discretion is adequate and fair remuneration for the work done.

It does not follow that because such a certificate is granted the registrar is bound to allow more than the maxima. It just takes off the limit, leaving the registrar a complete discretion as to quantum.

It is, therefore, clear that in all cases where a solicitor is of opinion that the amounts permitted on the county court scale would not adequately remunerate him for the work done, an application should be made for a certificate under Ord. 47, r. 21.

It is desirable that the application for such a certificate should be made at the trial. If it is not, then the application must be on notice which must be served within seven days of the making of the order for costs, and at the hearing the judge may refuse the application on the ground that it ought to have been made at the trial.

A Conveyancer's Diary

RESTRICTED POWERS OF REVOCATION

Re Hooker's Settlement [1954] 3 W.L.R. 606, and p. 750, *ante*, is clear authority for the proposition that the court has no jurisdiction to entertain an application for its consent to the exercise of a power of revocation in a settlement which is expressly made exercisable with the consent of [a judge of] the Chancery Division of the High Court of Justice. (The settlement in this case contained these words in square brackets, but although in one part of his judgment Danckwerts, J., appeared to think that they made matters worse, a consideration of the whole judgment shows that the case was decided on principle and not on any narrow view founded upon the language of the particular settlement before the court.) This decision was based partly on authority, and partly on general grounds.

The authorities on the subject are in a somewhat unsatisfactory state. First, there is the case of *Re Baker* [1936] Ch. 61, a bankruptcy decision, in which one of the matters for consideration was whether a settlement made by the bankrupt was voidable, as having been made with intent to defraud creditors, under s. 172 of the Law of Property Act, 1925. The settlement contained a clause authorising the settlor to revoke the trusts thereby declared with the approval of the trustees or of a judge of the Chancery Division of the High Court of Justice, and to declare new trusts in substitution therefor. Farwell, J., having considered the other provisions of the settlement, expressed the view that the settlement might well have come within s. 172 had it not contained the revocation clause, which could not be overlooked. The power of revocation reserved to the settlor was, after the settlor's bankruptcy, exercisable by the latter's trustee in bankruptcy, and the trustee in bankruptcy, if he could not obtain the consent of the trustees of the settlement to the revocation of the trusts declared thereby, was entitled to apply to a judge of the Chancery Division for his sanction, and in a proper case he would no doubt obtain the sanction of the judge to a complete or partial revocation, as necessary. In the face of that, the learned judge continued, it appeared to him impossible to hold that the settlement had been executed with intent to defraud creditors ; one could not conceive that a judge in the Chancery Division in a proper case would refuse the sanction of the court to the revocation of the settlement to the extent necessary for paying debts. Finally, Farwell, J., went on to consider a suggestion that, although he was then sitting in Bankruptcy, he might as a judge of the Chancery Division then and there sanction a revocation, but dismissed the suggestion as procedurally improper.

The other authority is *Re H's Settlement* [1939] W.N. 318, in which again a settlement reserved to the settlor a power of revocation with the consent of the Chancery Division of the High Court. The settlor applied for such consent. Simonds, J., made an order authorising the settlor to exercise the power, in chambers, apparently on compassionate grounds. No reasons are given in the report, which is very short, for this order, which went against the expressed views of the

learned judge. According to these views, it is only the Legislature which is at liberty to impose on a judge of the High Court a duty to exercise a discretion, and a private individual is not entitled to do so; if such a discretion is required in a settlement, it should be made exercisable by trustees, and the court should only be asked to exercise it if the trustees refuse or neglect to do so.

In his judgment in *Re Hooker's Settlement*, Danckwerts, J., referred to both these decisions, and expressed the opinion that the view of Simonds, J., was the right one. The clause was an attempt to make the judge an arbitrator without his consent, and although there might be some plausibility about such a clause when it was contained (as this clause was) in a settlement, the matter was capable of greater extension in a very undesirable and improper manner; if a settlor was entitled to require the co-operation of a judge of the High Court in that manner, a judge could be compelled to act as arbitrator in commercial disputes or even in a question about a race. That was something wholly unjustifiable which could not be allowed to pass. The result of the decision has already been stated: the court refusing jurisdiction to give its consent to the exercise of the power, the power could not be properly exercised at all.

This decision opens up two lines of speculation. Let it be conceded that the liberty to require a judge of the High Court to exercise a discretion is capable of extension in an undesirable manner, but the courts have in the past found means to discourage certain kinds of application, e.g., in the case of frivolous or scandalous wagers which, apart from their frivolity or scandalous nature, were otherwise legal. And for a much more recent example of something very like a refusal to entertain an application, reference may be made to *Hinckley and South Leicestershire Permanent Benefit Building Society* v. *Freeman* [1941] Ch. 32. If the court has a power to reject, within reason, certain applications without deciding them, the argument that to entertain applications of the kind which have been made in the three cases which have been mentioned may set a dangerous precedent for the future loses its force. Then, to turn from considerations of broad policy to the state of the authorities on this point, it seems to me, with respect, that too little weight was given in reaching the present decision to the decision in *Re Baker*. It is true that in that case the validity of the revocation clause came before the court not as an isolated problem but as part of a broader problem, viz., the voidability of the entire settlement under the particular statute, but it seems clear that in the way in which it was treated by Farwell, J., the broader problem turned entirely on the validity of the revocation clause, and on that question, it is submitted, Farwell, J., had no doubts at all. If the decision in *Re Baker* had been cited to Simonds, J., in *Re H's Settlement*, the judgment in the latter case might well have been different. But as it is, this judgment as reported is very unsatisfactory; there must have been some reason for an order made in the teeth of the learned judge's own strongly expressed views.

The other point which strikes me is the very fine distinction which, as matters now stand, must be taken to exist between the case where the power of revocation is made exercisable with the consent of the Chancery Division, and the case where the power is exercisable with the consent of the trustees, but that consent is in fact given by the court. This may happen either in the event of the trustees refusing or neglecting to give their consent—in which case the court will step in, on the application of an interested party, and discharge the trustees' duty for them: this was the case envisaged by Simonds, J., in his judgment in *Re H's Settlement*—or it may happen in the event of the trustees surrendering their discretion whether to consent or not to the court; this is the case envisaged by a form in Key & Elphinstone's Precedents in Conveyancing in the edition current in 1917, when the settlement in *Re Hooker's Settlement* was executed, and referred to by Danckwerts, J., in his judgment. This form was included in successive editions of Key & Elphinstone up to the thirteenth (1932), and it provided that the substantive power was not to be exercisable without the consent in writing of the trustees given under the advice of the Chancery Division of the High Court of Justice. This form disappeared in the fourteenth edition (1940) in favour of a form which requires the consent of the trustees *simpliciter*, doubtless because the learned editors were under the impression that the clause in its earlier form fell foul of the decision in *Re H's Settlement*. Now, however, it would appear that the interposition of the trustees between the court and the person interested to obtain consent to the power of revocation removes the defect from which a power to revoke with the consent of the court alone suffers. There may be historical justification for the distinction, but the practical result seems very much the same, with the trifling exception that the applicants for the court's directions are in the one case the trustees of the settlement, and in the other the persons by whom the power to revoke is exercisable. (It was the settlor himself, or rather herself, who applied in both *Re H's Settlement* and *Re Hooker's Settlement*.)

Powers of revocation reserved to the settlor himself are not fashionable nowadays because of the charge to estate duty which they create, but powers of revocation and new appointment conferred upon the trustees are not infrequently included in modern settlements giving wide discretionary powers of distributing income to the trustees, as a precaution against the unforeseeable event (*sc.*, a change in estate duty law). If a suggestion is made that the trustees' power of revocation and new appointment is to be fettered in some way, *Re Hooker's Settlement* and its predecessors in this line should be very carefully considered. If, then, it is felt that no very certain guidance can be obtained from these cases, and the settlor is still insistent on some control being imposed on the trustees' power, a provision that the power shall be exercisable only with the approval previously obtained of a Queen's Counsel practising in the Chancery Division may perhaps meet the requirement.

"A B C"

Landlord and Tenant Notebook

SHOP NOT AN AGRICULTURAL HOLDING

THE Agricultural Holdings Act, 1948, s. 1 (1), defines " agricultural holding " as " the aggregate of the agricultural land comprised in a contract of tenancy " and the decisions in *Dunn* v. *Fidoe* (1950), 66 T.L.R. (Pt. 2) 611 (C.A.), and *Howkins* v. *Jardine* [1951] 1 K.B. 614 (C.A.) showed that, whatever this might mean, it did not mean that where part of premises was and the rest was not agricultural land, the court was to treat the two parts as severed and governed by different codes; at all events there could be no severance if the non-agricultural part was in some way connected with agriculture. These authorities were cited in the recent case of *Monson* v. *Bound* [1954] 1 W.L.R. 1321 ; *ante*, p. 751, in the course of which it was suggested that *Dunn* v. *Fidoe* warranted the proposition that a distinction was to be drawn between properties which were part agricultural and part non-agricultural, geographically speaking as it were, and cases in which the activities were partly agricultural and partly non-agricultural but were carried on all over the holding or were such that the non-agricultural activities were connected with the agricultural ones.

Dunn v. *Fidoe* was a landlord's action for possession, the tenancy having been, it was alleged, determined by notice to quit ; the defendant had served a counter-notice on the footing that the premises were an agricultural holding and consent had been sought and refused, and the plaintiff then contended that the Agricultural Holdings Act, 1948, did not apply at all. The premises consisted of (i) a duly licensed inn, with outbuildings and a garden, the area being about one acre ; adjoining these (ii) eleven acres of pasture and orchard. The pasture had been sublet ; the defendant sold the produce of the orchard himself. The inn provided " the larger and more constant part of " his income ; but he made substantial profits from the fruit and pasture, and—this is the consideration relied upon by the tenant in *Monson* v. *Bound*—made some use of the inn for the purposes of the business done in fruit yielded by the orchard. And in his judgment Tucker, L. J., rejecting the " dominant purpose " test, said : " It is quite true that he (the county court judge) finds that the most profitable use of the premises was that as licensed premises ; but the licensed premises were nevertheless used, and I think *necessarily* used, in connection with the agricultural trade or business carried on at the premises by the tenant." From what follows, it may well be that the learned lord justice so expressed himself in order to dispose of points raised by an imaginative defence : suppose you had a large hotel with some small portion of agricultural land attached, or even a large factory with a certain amount of land the produce of which was sold : on which Tucker, L. J. declined to express any concluded opinion, but threw out the suggestion of severance. " It is quite true that such a construction would be contrary to the common-law rule that a notice to quit part of premises is bad ; but nevertheless it may be a necessary inference from this Act that that result was intended in the case of a building which is *totally* [my italics] unconnected with the agricultural land with which it is let."

In *Howkins* v. *Jardine* the court dissented from this *dictum ;* but the expressions of dissent may be said to be *dicta* themselves. The facts were that property consisting of seven acres of agricultural land, on which there were three cottages, were let to a farmer ; he for a time had lived in one of the cottages, then moved to another farm, and sublet all three cottages, the subtenants not being engaged in agriculture. The plaintiffs, executors of the original landlord, served the tenant with a notice to quit ; he served a counter-notice and consent was (ultimately) refused. Whereupon the action was brought, for possession, but limited to the three cottages, and the county court judge came to the conclusion that severance was warranted by the " means the aggregate of the agricultural land comprised " of s. 1. The tenant's appeal succeeded. The Court of Appeal rejected the argument in favour of severance, suggesting that the true significance of " the aggregate " was that all the various activities which, by virtue of the definition in s. 94 (1), might be "agriculture" (fruit growing, livestock breeding, etc.) explained the use of the word ; and, apart from that, there was no machinery for apportionment of rent. But it also held that a decision on the point was not necessary, for, if Tucker, L. J.'s views as stated in *Dunn* v. *Fidoe* were correct, well, in the case before the court the buildings were *not* totally unconnected with the land with which they were let.

The " connection " was, of course, of a very different nature. In *Dunn* v. *Fidoe* the link was that of use : and the expression " agricultural land " which figures in the definition of " agricultural holding " in s. 1 (1) is itself defined in the following subsection as " land used for agriculture which is so used for the purposes of a trade or business." In *Howkins* v. *Jardine* the link was that of character : in Jenkins, L.J.'s words : " The cottages . . . must be regarded as ancillary to the holding of seven acres of undeniably agricultural land. The whole . . . was let under an agreement in terms clearly appropriate to an agricultural holding. The character of the demised premises as agricultural or non-agricultural land cannot, in my judgment, be made to depend on the occupation of the persons to whom the cottages may be let from time to time. Else, by parity of reasoning, if the cottages were at any time vacant the property as a whole would not constitute an agricultural holding . . ." Somervell, L.J., said : " There is, of course, no such thing as permanence in human affairs, but an inn will presumably continue as an inn and a factory as a factory, though either might no doubt be converted into an agricultural building. A cottage, however, may at any time change hands . . . To treat such cottages, covered in what is in substance, an agricultural tenancy, as coming within and going out of the Act according to the occupation of the tenants at the moment would be a result so absurd that only the clearest words would make me come to such a conclusion." One might reflect that the words of the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (6)—" Where this Act has become applicable to any dwelling-house . . . it shall continue to be applicable thereto whether or not the dwelling-house continues to be one to which this Act applies "—do not seem to have enacted anything ; but that Greer, J.'s suggestion made in *Phillips* v. *Hallahan* [1925] 1 K.B. 756—" It means that so long as premises are, and whenever they are, used as a dwelling-house the Act applies "—seems plausible. Change of status by change in the occupation of the tenant is not unknown to the law, and Hodson, J., the third member of the court in *Howkins* v. *Jardine*, does not appear to have been influenced by this consideration.

The problem in *Monson* v. *Bound* was that of about one-third of an acre with a frontage to a shopping street in a town, on which stood a one-storeyed shop ; behind it an old residence with a glass conservatory ; behind the latter a wreath-making room and two heated greenhouses ; further back some store rooms and a garage and a stokehole, two more greenhouses, a potting-shed, and some cold frames and forcing sheds. These took up some two-thirds of the site. As to their user : the shop was used substantially for the retail sale of horticultural

products and horticultural sundries. The old residence was used as an office and as a store; of the greenhouses, one was derelict while the potting shed and forcing frames were semi-derelict. The open ground was a cultivated stock garden; one of six employees devoted half his time to it with occasional help. It was found that sixty-five per cent. of the turnover came from the sale of cut flowers, pot plants, shrubs and wreaths, and about one-sixth of that percentage was yielded by such flowers, etc., grown or raised on the premises. The lease (ten years expiring Ladyday, 1952) made it clear that the premises were let for use for the purpose of a horticulturist. When it expired, the defendant relied on the Agricultural Holdings Act, 1948, s. 3, no notice to quit having been given.

The defence strove valiantly to establish that the Act applied (a cynic might suggest that if the Landlord and Tenant Act, 1954, Pt. II, had been in force the tenant might have been at pains to establish that it did not: s. 43 excludes agricultural holdings), and it may well be that if a certain unreported county court decision which the "Notebook" discussed and criticised on 29th September, 1951 (95 Sol. J. 620: "Smithy an Agricultural Holding") had been decided at a higher level more support would have been available. For the county court judge who tried that case considered that *Dunn* v. *Fidoe* and *Howkins* v. *Jardine* showed that relative area did not matter, and that the same applied to proportion of agricultural to non-agricultural activity and profits; but when he suggested that keeping rabbits in the back garden of a dwelling in some industrial town might make the premises concerned an agricultural holding, it seemed that proper effect was not being given to one statement in Hodson, J.'s judgment in *Howkins* v. *Jardine*: "... the court has in each case to consider whether the land as a whole comes within the definition ... and in arriving at this conclusion to decide whether a substantial part is at the relevant date used for a purpose which is not agricultural." For, while there was the added factor of mixture of activities in *Monson* v. *Bound*, McNair, J., decided the issue in favour of the plaintiff on the ground given in the following passage: "Although undoubtedly horticultural processes were carried on in substantially the whole of the premises ... my conclusion, viewing the matter broadly as a matter of substance, is that the premises as a whole were at the material time being used for the purpose of a retail shop ..."

R. B.

HERE AND THERE

TEMPUS EDAX

If it's just morbid horror you want, you can find all you are looking for in the children's illustrateds, some of them. But for horror in the high tradition of dramatic irony it would be hard to invent a tragedy so complete and rounded as the fate of the winder of the great clock at the Law Courts. As fiction, it would have been a work of genius in the tradition of Edgar Allan Poe. As fact, it seemed strangely out of place among the monotonously manufactured sensations of the daily press. The place—the point where the roaring tides of the City and the Strand meet and mingle. The building—the crowded courts in term time. The instrument of death—the great clock towards which hundreds glance every minute in so many varying moods. And at the heart of all that the pitiless violence, secret and undetected. Machines have personalities of their own, the insect personalities of motor cars and aircraft, the worm personality of underground trains, the friendly dragon personality of locomotives. But most compelling are the personalities of clocks, which are all face and hands, and windmills, giants which are all arms. *Objets inanimés, avez-vous, donc, une âme?* The instinct which has given a feminine personality to the waywardness of a ship would certainly answer "yes." Inanimate objects have, as it were, souls at second hand. Houses certainly soak up the personalities of their builders and their inhabitants. And so it is also with machines, especially clocks, to the design of which go so much craftsmanship and individualism. They have their mysterious aberrations, their secrets and their half-authentic histories. The great clock of the Law Courts is supposed to have been made to the design of an illiterate carpenter at the time of their building and since then to have defied every effort at duplication. It is the patriarch of all the clocks in the building. The man who tends them and winds them must feel somewhat in the position of a keeper at the zoo moving about among his charges. There are about 320 clocks of every variety of shape and size in the courts, in the corridors, on the mantelshelves of the private rooms of judges and officials. And high up a turret stairway is the doyen of them all, the mysterious giant, one of the few London clocks which does not require regular synchronisation with Greenwich. Seventeen years is a long stretch to have had charge of them all, winding them twice a week, attending to their little ailments, acting as Time's servant, to have watched him running out for the service of legal documents innumerable, for prolix speeches without number, for judges moving towards retirement, or seen Time staying in the vacation, while the lawyers sleep between term and term. For seventeen years Tommy Manners had been at once the servant and the master of time in the courts so that the attendants spoke of "Tommy's Mean Time." But Time—*edax rerum*—is a devourer before which you can never drop your guard and one day he went too familiarly into the narrow room filled with the winding machinery of the great clock. Year after year, week after week, he had been there before. This time, without a warning, the machinery seized his clothes, dragged him to itself and then threw him away. Time had done its worst. At the inquest the verdict was "Accidental death."

COMMON DENOMINATOR

Lord Goddard's suggestion, at the swearing in of the new Lord Mayor, that juries should be reduced to seven and majority verdicts accepted, has, on the whole, met with a respectfully dissentient press, headed by a *Times* leading article and a letter from Sir Travers Humphreys published on the same day. One may cheerfully admit that in this, as in all other human affairs, matters might be rearranged in a score of different workable patterns and yet one might still feel that they were better left alone, for, especially in human relationships, it is not enough for a system to be workable; it must have a background which inspires confidence and basically confidence is unreasoning, something of the heart and feelings, not of the mind. This confidence the idea of the unanimous verdict of a jury of twelve does inspire (curiously enough, it seems, if one looks steadily at any twelve people who happen to be sitting opposite one in the Underground). It has been said that democracy is not in its essence an appeal to the arbitrament of majorities or even of everybody, but rather of anybody, that it is only the standards which anybody, except the millionth chance lunatic, holds which have full authority. The jury system puts this principle into active practice, for the jury is the embodiment of the average common sense of the citizen. In a court of law that common sense has to survive strains which would not

be put upon it in a public house, the awe of unfamiliar surroundings, the sophistries of legal argument, and twelve jurors have a a cohesion and solidarity to resist them which a smaller number might not always achieve. Sir Travers Humphreys, writing of the war-time juries of seven, says that he thought the number a dangerously low minimum, especially in country places. For certain purposes such juries are known in New Zealand. The late Mr. Justice Alpers discussed them in his reminiscences and considered that they did not produce the average common sense which it was their function to bring into the lawyers' workshop; he said that theirs were the only stupid verdicts he had encountered. As to unanimity, it is the guarantee that the onus of proof, before a man is punished, lies on those who would punish him. Other systems could be devised and, of course, exist elsewhere which lay less stress on this. The Scots have juries of fifteen, majority verdicts and the halfway house of "Not Proven." The French have juries of five, who are more like assessors and consult with the judge before finding a majority verdict. Each nation has its own genius and habits. The English have theirs, and so far they have preferred to put up with the inconvenience of a few inconclusive disagreements than renounce their ultimate faith in any chance passer-by in the street.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

A Wife's Maintenance

Sir,—A recently reported case about a wife's maintenance raises some important matters of principle. Questions of maintenance are not decided by law alone. Factors of social policy inevitably influence questions of liability and amount. In this case a husband had deserted his wife, but there had been no divorce. The husband was of substantial independent means and they had increased. The judge considered that the wife should not be deprived of some benefit from the husband's increased income, and that he ought to put her in the position in which she would have been but for the husband's wrongdoing in deserting her. The husband's legal advisers suggested that the wife should resume work, but the judge, commenting on this, said that they made this suggestion only with one object—to reduce the amount of money that the husband should pay her, and he did not think she should be deprived of her luck in marrying someone who brought about an improvement in her financial and possibly her social position. It had been through no fault of hers that the married life together had come to an end, and he saw no reason why she should go back to earning in order to reduce her husband's liability to maintain her.

We are not concerned with the facts of this particular case, but some of the factors mentioned by the judge are not strictly matters of law and call for comment by citizens desirous that legal machinery should reflect changing social conceptions. In the first place, the statement that the marriage had come to an end through no fault of the wife is a reference to the legal theory that in all matrimonial cases one party is innocent and the other guilty. But this theory ignores the fact that a husband's desertion flows from the whole marriage situation. This situation and the relationship of the two parties is something to which they both contribute and which they both build up together. They may not be equally to blame for the result, but an act of desertion should not be isolated from the whole history and working of the marriage. Magistrates, probation officers and others, who are frequently in close contact with both parties to a broken-down marriage, know that the legal conceptions of innocence and guilt are fictions, with little correspondence to reality. It is very rare indeed for one party to be solely guilty. The universal practice of making this fiction the basis for maintenance decisions may well lead to injustice.

The other point must also be resisted. A husband may have the desire, in suggesting his wife should go to work, to get low maintenance payments, but society is interested in these matters, and I am writing to submit that it is quite wrong nowadays for the courts to encourage able-bodied women not to work when they have earning capacity and no children. The community needs the work they can do. The new relations between the sexes and an era of full employment have changed the situation, and it is to be hoped that the forthcoming report of the Royal Commission on Divorce will indicate that the courts should apply different principles to married women's rights to maintenance.

ROBERT S. W. POLLARD,
Chairman, Marriage Law Reform Society.

London, S.W.1.

BOOKS RECEIVED

Executive Discretion and Judicial Control. An Aspect of the French Conseil d'Etat. The Hamlyn Lectures, Sixth Series. By C. J. HAMSON, of Gray's Inn, Barrister-at-Law. 1954. pp. x and 222. London: Stevens & Sons, Ltd. 12s. 6d. net.

Oyez Practice Notes, No. 7: Powers of Attorney. By CHARLES CAPLIN, LL.B., Solicitor, assisted by ARNOLD WEXLER, LL.B., Solicitor. Second Edition by J. F. JOSLING, Solicitor. 1954. pp. 67. London: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

Oyez Practice Notes, No. 36: Obtaining Letters of Administration. By D. R. LE B. HOLLOWAY, LL.B. (Hons.), of the Principal Probate Registry. 1954. pp. (with Index) 108. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

Moore's Practical Agreements. Ninth Edition. By J. WATSON-BAKER, M.A. (Oxon.), of the Inner Temple, Barrister-at-Law, and T. L. DEWHURST, M.A., M.C., of Lincoln's Inn, Barrister-at-Law. 1954. pp. xli, 444 and (Index) 52. London: Butterworth & Co. (Publishers), Ltd. £2 7s. 6d. net.

A.B.C. Guide to the Practice of the Supreme Court. Supplement to the Thirty-seventh Edition. By D. BOLAND, M.B.E., Clerk of the Lists, Queen's Bench Division. 1954. pp. 16. London: Sweet & Maxwell, Ltd. 1s. 6d. net.

"Current Law" Income Tax Acts Service [Clitas]. Release 21. 1954. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

Income Tax, Sur-tax, etc., Chart-Manual, 1954-55. Thirty-ninth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1954. pp. viii and 125. London: Chas. H. Tolley & Co. 12s. 6d. net.

Income Taxes in the Channel Islands and Isle of Man. Fifth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1954. pp. 22. London: Chas. H. Tolley & Co. 5s. net.

Synopsis of Estate Duty. Compiled by A BARRISTER-AT-LAW. Edited by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1954. pp. 40. London: Chas. H. Tolley & Co. 5s. 6d. net.

1954-55 Synopsis of Taxation in the Republic of Ireland (Eire). Thirtieth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1954. pp. 14. London: Chas. H. Tolley & Co. 2s. 6d. net.

Synopsis of Profits Tax. Eighteenth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1954. London: Chas. H. Tolley & Co. 5s. net.

REVIEW

Key and Elphinstone's Precedents in Conveyancing. Fifteenth Edition. Volumes 1 and 2. Agreements—Licences; Mortgages—Wills. 1953. London: Sweet & Maxwell, Ltd. Three volumes, £15 15s. net.

The fourteenth edition of Key and Elphinstone was published in 1940. Since then there have been few important changes in the law affecting conveyancing. It is, therefore, natural to find that the alterations in the new edition are mainly confined to the noting of new cases and legislation and an attempt to meet the confused state of the law as to town and country planning. The total number of precedents (excluding forms) appears to be about the same as in the fourteenth edition. The present edition appears to contain most precedents required for conveyancing properly so called; indeed, it is open to question whether some of the precedents (e.g., for appointing a gamekeeper or engaging a bank manager or a research chemist) are suitable for a work on conveyancing.

This new edition is the work of seven editors, each editor being responsible only for the titles set against his name. There is no editor responsible for the arrangement and accuracy of the work as a whole. The result is not satisfactory. Faults in arrangement which were apparent in the fourteenth edition remain and the editing does not attain the high standard of accuracy which users of Key and Elphinstone have the right to expect.

Volume 1 opens with the uninformative title of "Agreements." The precedents included are of a varied nature, several of which might be grouped under distinctive titles. For instance, Precedents V, X and XII all relate to service with a firm and might be placed under the title "Partnership" or under a new title of "Service Agreements." Similarly, Precedents XVII, XVIII and XIX would be more appropriate to the title "Easements," and Precedent XXI to the title "Leases."

The title "Appointments" includes appointments of beneficial interests under special or general powers, the appointment of a guardian by a father and the appointment of a gamekeeper by the lord of a manor. It would be interesting to know how many manors still have formally appointed gamekeepers. In the preliminary note to "Appointments of Beneficial Interests," the statement that "the equitable doctrine as to frauds on powers must also be carefully borne in mind," followed by a list of cases, is not helpful. *Re Crawshay* is mentioned, but no reference is made to the decision on appeal [1948] Ch. 123, and the six propositions accepted by the Court of Appeal at p. 134 should have been stated. The preliminary note to "Appointments of New Trustees" (which closely follows the same note in the fourteenth edition) is excellent, but no mention is made of *Re Brockbank* [1948] Ch. 206, deciding that the beneficiaries, although absolutely entitled to the whole property, cannot compel the donee of the power to appoint their nominee to be a trustee.

The fourteenth edition contained a useful preliminary note on arbitration. In the new edition this note has been omitted. The old note would, of course, have required revision to conform with the Arbitration Act, 1950; but the new note is not a satisfactory substitute.

The preliminary note on "Assents" expresses no opinion on the vexed question whether an assent is essential where the personal representative is absolutely entitled or is a trustee for sale. The statement on p. 238 that "a personal representative cannot sell as beneficial owner until he has assented in writing in his own favour (*Re Hodge* [1940] Ch. at p. 264)" is not supported by the judgment. As a contribution to the controversy, the writer suggests that, as the use of an assent to pass the legal estate is permissive, a conveyance by a personal representative in the ordinary form would pass the legal estate to the purchaser, who would then be protected by s. 36 (7) of the Administration of Estates Act, 1925, so that the question is usually only of academic interest.

The preliminary note on "Covenants relating to Land" first appeared in the fourteenth edition and is reproduced in the present edition with additions. Although a valuable contribution, it fails to deal with certain points relevant to conveyancing. The note, although it contains much valuable material, requires rearrangement and revision before it can be accepted as a reliable guide to conveyancers. It is suggested that the note should be rewritten and incorporate the notes on p. 1, on p. 367 as to building schemes, and on p. 894 as to the form of covenants. It might be placed under the title of "Covenants relating to Land," comprising all relevant forms and precedents, including a precedent for releasing or varying a covenant, there being no such precedent in the present edition.

A precedent is given on p. 893 for the sale of a reversion to the tenant for life whereby estate duty may be saved. But no guidance is given as to the circumstances in which such a sale will be beneficial or as to the conditions which must be fulfilled if estate duty is to be avoided. Nor is any mention made of *Re Earl Fitzwilliam's Agreement* [1950] Ch. 448, or of s. 46 (1) of the Finance Act, 1950.

The notes to "Covenants, Formal Parts of," omit to mention *Chelsea and Walham Green Building Society* v. *Armstrong* [1951] Ch. 853, deciding that a deed expressed in the first person was not a deed *inter partes*, and that a person named as a covenantee could sue on the covenant although he was not a party. The decision supports the validity of seven-year covenants with charities which are often made in the first person.

The title "Direction and Consent" contains forms relating to settlements, settled land and mortgages which would, it is suggested, be more conveniently placed under the titles to which they really belong.

The title "Leases (Houses), etc.," contains an immense amount of information and a great variety of precedents. But the notes are badly placed. The preliminary note on the powers of leasing possessed by estate owners would be better placed under the sub-title "Parties."

Volume 2 begins with Mortgages. The note in vol. 2 of the fourteenth edition, p. 77, on consolidation of mortgages, has been omitted to save space, as also has the useful note on p. 71 of the fourteenth edition on the assignment of choses in action. Form 17 on p. 88, purporting to limit the operation of ss. 197 and 198 of the Law of Property Act, 1925, as to notice by registration, seems to be of doubtful validity. The precedents of mortgages show little change from the fourteenth edition. They are of great variety, but their arrangement is unsystematic. Regrouping under distinctive sub-titles is required. No precedent of a mortgage to a building society is given.

The preliminary note on Mortmain and Charity (reproduced from the fourteenth edition) has been brought up to date. The note contains a learned discussion on the meaning of "mixed charities." But no mention is made of the useful principle established by *A.-G.* v. *Mathieson* [1907] 2 Ch. 383 that, where money is given for charitable purposes of an indefinite character, the individual or committee entrusted with the money has, in the absence of evidence to the contrary, implied authority to declare the trusts thereof. The note also fails to give information as to the appointment of new trustees or as to the functions of the official trustee of charity lands or of the official trustees of charitable funds. Other notes and precedents relating to charities are to be found in various parts of vols. 1 and 2. It is suggested that all the notes, forms and precedents relating to charities should be collected under the title "Charities."

The title "Notices" contains a useful note on the effect of notice to the debtor or trustees of the assignment of a chose in action. It is suggested that a comprehensive note on choses in action from the conveyancing point of view (which would incorporate the note on p. 71 of vol. 2 of the fourteenth edition) would be more useful.

The title "Partnership" shows little change except that the variations in the forms applicable to limited partnerships have been omitted. However, the full precedent of a limited partnership has been retained. The notes on conveyances of partnership land are to be found in vol. 1, p. 786 *et seq.*, while the precedent of a declaration of trust of partnership land in favour of the firm is given under the title "Partnership." It is suggested that all documents relating to partnership should be grouped under the same heading.

The preliminary note in Settlements (Personal) in the fourteenth edition was written by the late Mr. F. E. Farrer. It is reproduced in the new edition with certain omissions. Paragraphs have been added on the Exchange Control Act, 1947, the Adoption Act, 1950, and on development value claims. Another note on the last-named subject is contained in vol. 1, p. 890, as a footnote to a precedent of an assignment. The result is confusing.

On p. €07 the surprising statement is made that it is not considered desirable to include precedents of settlements designed

to reduce the liability of a settlor for income tax and sur-tax and settlements designed to avoid liability for unnecessary estate duty. But seven-year covenants and settlements on infant children of the settlor are part of the ordinary work of a conveyancer, and with proper guidance present no great difficulty.

The note on vesting assents (p. 825) repeats a great deal of matter contained in the preliminary note to Assents (vol. 1, p. 237). Both notes would be improved by consolidation.

The title " Wills " shows little change. This is not said as a criticism, because the collection of precedents and the fullness and accuracy of the notes could hardly be improved. The note on perpetuities written by the late Mr. F. E. Farrer is retained ; but surely such a classic should be placed under a separate title of " Perpetuities."

All the editions of Key and Elphinstone prior to the fourteenth were edited by one or more editors, each of whom was responsible for the whole work. For over twenty years the late Sir Howard Elphinstone was the senior editor, and under his guidance the work attained a position of unchallenged supremacy. Since then, Key and Elphinstone has expanded and now requires radical rearrangement and revision if it is to retain its reputation. Many precedents are grouped under inapt titles and there is considerable overlapping in the preliminary notes. Some of these notes are excellent, but others require rewriting and careful revision. Statements such as " As to *A*, see cases *B* and *C*, etc.," should be avoided, and at least an indication should be given as to the point decided in each case. This has been well done in the title " Mortmain." The appointment of an experienced editor to be responsible for the arrangement and accuracy of the whole work is required.

The new edition has many defects ; but the work still remains in the front rank and contains a variety of information and of reliable precedents not to be found in any other work of comparable price.

A review of Volume 3 will appear in a later issue.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

LAND: TITLE: HOTCHPOT: OPTION OF HEIR TO BRING IN PROPERTY OR ITS VALUE

Murugiah *v.* Jainudeen

Lord Morton of Henryton, Lord Cohen, Lord Keith of Avonholm, Mr. T. Rinfret and Mr. L. M. D. de Silva

3rd November, 1954

Appeal from the Supreme Court of Ceylon.

In 1927, one, Ponniah, was the owner of Kirigalpottewatta, but on 1st November, 1927, he executed a deed of gift by which he conveyed the 10 acres now in question to his son, Sellasamy, reserving a life interest to himself. In the deed of gift the 10 acres were expressed to be of the value of Rs.6,000. This deed was never registered under the Registration of Documents Ordinance. Ponniah died on 26th May, 1936, and in September, 1936, his widow commenced proceedings (Case No. 5437) in the District Court of Kandy, asking for letters of administration to be granted to her of the deceased Ponniah's estate and asking also that certain lands donated by Ponniah in his lifetime (including the land now in question) should be brought into hotchpot and treated as part of his estate. Sellasamy was the first respondent to that suit and alleged that he was not bound to bring into hotchpot the 10 acres of land since they were not given to him on the occasion of his marriage or for his advancement or establishment in life. The relevance of that allegation was that by s. 39 of Ordinance No. 15 of 1876, reproduced by s. 35 of the Matrimonial Rights and Inheritance Ordinance, it is enacted that " Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others either on the occasion of their marriage or to advance or establish them in life, unless it can be proved that the deceased parent, either expressly or impliedly, released any property so given from collation." On 28th June, 1937, the district judge granted letters of administration to the widow, and by consent the donated properties were left, for the time being, in the possession of the donees. On 3rd February, 1941, the district judge dealt with Sellasamy's contentions, and he concluded : " I therefore hold that the property gifted to the first respondent was on the occasion of his marriage and that its value was Rs.6,000 and that it must be brought into collation. I would also order that the first respondent do pay to the other respondents the costs of this inquiry." No formal order appears to have been drawn up to give effect to this decision, and no transfer by Sellasamy to the administrator was ever executed. Sellasamy appealed first to the Supreme Court of Ceylon and then to the Judicial Committee on the question whether the property was liable to collation, and in both courts the decision of the district judge was affirmed. On 26th February, 1942, Sellasamy mortgaged the property for Rs.1,500, but this mortgage was paid off. It was entered on the register of incumbrances pursuant to the Registration of Documents Ordinance. On 24th February, 1944, Sellasamy mortgaged the property for Rs.4,000 advanced by one, Appuhamy. This mortgage was also registered. On 26th August, 1948, Appuhamy commenced proceedings to enforce his mortgage and recovered judgment on 25th February, 1949. The property was, in due course, sold by the deputy fiscal pursuant to an order made on 9th August, 1949. It was bought by the respondent for Rs.400 and was conveyed to him by the deputy fiscal on 21st February, 1950. On 19th May, 1950, the appellant procured the registration of the decree of 3rd February, 1941, on the footing, presumably, that the judgment was an instrument affecting land within the meaning of s. 8 of the Registration of Documents Ordinance. On 9th August, 1950, the respondent commenced the present proceedings against the appellant, who had become the administrator of Ponniah's estate, in succession to the widow. The respondent alleged that the appellant had wrongfully and forcibly entered into possession of the land in dispute some three months previously, and claimed a declaration that he (the respondent) was entitled to the land and to consequential relief. The appellant relied on the order made in Case No. 5437 on 3rd February, 1941, and contended that by virtue thereof Sellasamy lost all rights to the land in dispute. The appellant also relied on the registration of that order as giving him priority over the respondent under s. 7 of the Registration of Documents Ordinance.

LORD MORTON OF HENRYTON, giving the judgment of the board, said that their lordships did not doubt that if and so far as any provision of s. 35 of the Matrimonial Rights and Inheritance Ordinance was inconsistent with the provisions of the common law, the section must prevail. It was for this reason that the Supreme Court, in *Vaitianathen* v. *Meenatchi* (1914), 17 C.N.L.R. 26, held that after the passing of the section collation took place only when a parent gave property to his children either on the occasion of their marriage or to advance or establish them in life. In their lordships' view, however, there was nothing in the section inconsistent with the preservation of the two options which existed in the law of Ceylon prior to the passing of Ordinance No. 15 of 1876. The first option, that of renouncing all claim on the estate or of bringing the property into collation, was preserved by the words " becoming . . . heirs to the deceased parents," which did not rule out the alternative that the donee might elect not to claim his share as an heir. The second option, that of bringing in either the property itself or the value thereof, was preserved by the use of the words " bring into hotchpot or collation." The Ordinance under consideration contained no definition of " hotchpot or collation " nor did it contain any provision from which their lordships could attribute any particular meaning thereto. The proper course, in these circumstances, was to attribute to the words the meaning which they bore under the law applicable immediately before the section was enacted. That meaning, undoubtedly, conferred upon the donee the second of the two options already mentioned. Turning to the question of the effect of the order of 3rd February, 1941, it was important to observe the learned district judge's statement of the question he was deciding. Their lordships would therefore repeat the citation : " The only other question to be decided is whether the first respondent who was given a deed of gift No. 7881 of 1927 (1 R 3) by his father Ponniah should bring the property gifted into collation if he wishes to inherit

as an heir. The point to determine is whether, as is stated by respondents two to six, such gift was made on the occasion of his marriage." It was, no doubt, true that the form of his final conclusion indicated that the learned judge was assuming that Sellasamy would claim his share in the inheritance, but having regard to the way in which the learned judge had stated the question he had to determine, their lordships were unable to construe his order as depriving Sellasamy either of his right to retain his gift and renounce his share in the inheritance or, if he desired to participate, of his option to bring in the value of the gift instead of the property given. Sellasamy thus retained the legal estate in the property, and there was no fetter upon his power to sell or mortgage it. As their lordships had already stated, he proceeded to mortgage the property and it was sold to the respondent by the deputy fiscal in proceedings commenced by the mortgagee. Thereafter Sellasamy could only claim to participate in the inheritance if he brought in the value of the property given, since he was no longer in a position to bring in the property itself, but this fact in no way affected the respondent's title to the property. Having regard to the view of the order which their lordships had just expressed, they could not regard it as being an instrument affecting land, within s. 8 of the Registration of Documents Ordinance. Thus the registration of the order in 1950 was ineffective to defeat the title of the respondent, even if it were assumed that the registration of the two mortgages was also of no effect, as had been alleged on behalf of the respondent. Appeal dismissed.

APPEARANCES: *R. O. Wilberforce*, Q.C., and *Gilbert Dold* (*Stephenson, Harwood & Tatham*); *Dingle Foot*, Q.C., and *Sirimevan Amerasinghe* (*Burchells*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[3 W.L.R. 682**

COURT OF APPEAL

LANDLORD AND TENANT: APPLICATION FOR NEW LEASE: TRANSITIONAL PROVISIONS OF LANDLORD AND TENANT ACT, 1954

Etam, Ltd. *v.* Forte and Another

Evershed, M.R., Hodson, L.J., and Lloyd-Jacob, J.

13th October, 1954

Appeal from Westminster County Court.

Etam, Ltd., having been tenants of shop premises fronting on to Piccadilly Circus, London, since 1925, in 1951, when their lease expired, served a notice under the Landlord and Tenant Act, 1927, on their landlords, a limited company, claiming a new lease. After negotiations, a new lease was granted to them for a term of twenty-one years, the rent being increased by £1,750 per annum. There was included in the lease an additional area of some forty square feet to enable the tenants to construct a new staircase. The lease contained a provision that, if the landlords sold the premises and their adjoining premises, it should be lawful for them to determine the term thereby granted by six months' notice to quit on payment of certain compensation. The tenants covenanted not to apply for compensation or the grant of a new lease under ss. 4 and 5 of the Landlord and Tenant Act, 1927, if the term thereby granted was determined by notice. The original landlords had sold their premises, and it was proposed to remodel the premises together with certain adjoining premises. Notice to quit was served on the tenants on 28th August, 1953. The tenants, notwithstanding their covenant, applied under s. 5 of the Act of 1927 for the grant of a new lease. The referee, who heard their application, held that no consideration had been given for the covenant and that there was adherent goodwill. He assessed the compensation, if the tribunal should think fit to award it, at £5,255. He came to the conclusion that a new lease should not be granted. In February, 1954, an interim order had been made under s. 5 (13) of the Act protecting the occupation of the tenants during the pendency of the proceedings. On 25th June, 1954, the county court judge held that no adherent goodwill had been proved and that there was no case for granting a new lease. The tenants gave notice of appeal. On 1st October, 1954, the Landlord and Tenant Act, 1954, came into operation. On appeal, the question arose as to the effect on the appeal of para. 8 of Sched. IX to the Act of 1954, which provides that " where at the commencement of this Act any proceedings are pending on an application made before the commencement of this Act to the tribunal under s. 5 of the Landlord and Tenant Act, 1927, no further step shall be taken in the proceedings except for the purposes of an order as to costs." The tenants sought to establish that the court had no jurisdiction to hear the appeal so that they could relitigate under the Act of 1954, which was, admittedly, more favourable to the tenants.

EVERSHED, M.R., after referring to *Cropper* v. *Smith* (*No.* 2) (1884), 28 Ch. D. 148, said that the phrase " proceedings pending on an application made before the commencement of this Act to the tribunal," in para. 8, did not apply to the appeal. Proceedings were no longer " pending " after the tribunal had given its final judgment. Accordingly, the appeal had to be considered on its merits. On the proper construction of s. 5 of the Landlord and Tenant Act, 1927, it was a matter of fact in the discretion of the tribunal to say whether in any case, and in all the circumstances, it would be reasonable to grant a new lease, and he was satisfied that in all the circumstances, having regard to the proposed remodelling of the premises, it would not be reasonable to grant a new lease. Where a lease contained a covenant by the tenant not to apply for a new lease or to seek compensation under the Act of 1927, it was for the landlord to show under s. 9 that there was, as Lord Hanworth said in *Holt* v. *Lord Cadogan* (1930), 40 T.L.R. 271, " solid and valuable " consideration for the covenant. Such consideration might be sought in matters outside the terms of the lease itself. The fact that a tenant had entered into such a covenant was a matter relevant to be taken into consideration in determining the question of reasonableness. His lordship expressed no opinion as to whether the consideration was, in fact, adequate, for that might have prejudiced a possible claim for compensation under s. 4 of the Act of 1927 or the corresponding section of the Act of 1954.

HODSON, L.J., and LLOYD-JACOB, J., agreed. Appeal dismissed.

APPEARANCES: *H. J. Phillimore*, Q.C., and *R. Graham Dow* (*Adler & Perowne*); *H. Heathcote-Williams*, Q.C., and *G. Avgherinos* (*Paisner & Co.*); *D. E. Evans*, Q.C., and *K. J. T. Elphinstone* (*Slaughter & May*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 719**

RENT ACTS: GREATER HARDSHIP: CHANGE OF CIRCUMSTANCES WHILE APPEAL PENDING

King *v.* Taylor

Evershed, M.R., Hodson and Romer, L.JJ. 15th October, 1954

Appeal from Croydon County Court.

C. A. King, the landlord of premises at Mitcham, within the protection of the Rent Restriction Acts, sought an order for possession against the tenant, R. M. Taylor, on the ground that the premises were required for occupation as a residence for himself and his wife. He and his wife were old and in poor health, and they desired to return to Mitcham from Shrewsbury, where they were living, in order that they might be near to a daughter who would be able to visit them frequently and to assist them in case of illness. The county court judge dismissed the application, holding that greater hardship would be caused by granting the application for possession than by refusing it as the tenant had not found other accommodation. According to the evidence the tenant had made only very slight efforts to find other accommodation. The landlord appealed. Between the date of the hearing in the county court and the hearing in the Court of Appeal the tenant's wife had died.

EVERSHED, M.R., said that it was decided in *Coplans* v. *King* [1947] 2 All E.R. 393 that, save in most exceptional circumstances, the question of comparative hardship was one for the county court judge. Having regard to the proviso to para. (*h*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the question whether other accommodation was available was a relevant circumstance in considering the balance of hardship. There being some evidence of hardship on both sides the decision of the county court judge could not be the subject of appeal. His lordship referred to the change in the landlord's circumstances since the hearing before the county court judge. In *Goldthorpe* v. *Bain* [1952] 2 Q.B. 455 it was said that the relevant circumstances in considering the balance of hardship were those at the time of the first hearing, but that was a case where an order for possession had been made and the question was whether it was rightly made. Having regard to the imperative language of s. 3 and the proviso to para. (*h*) of Sched. I to the Act of 1933, if, where an order for possession had been refused, it was shown to the Court of Appeal that the circumstances of the parties had changed in a way

which was material in the consideration and enforcement of the provisions of the Act since the date of the hearing in the county court. the Court of Appeal was not entitled to ignore that change of circumstance. The proper course was for the court which was asked to make an order for possession to take into consideration all the circumstances which were before it.

HODSON and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *A. M. Hughes-Chamberlain* (*H. W. Perkins & Co.*); *W. D. M. Sumner* (*W. Timothy Donovan*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 669

CONTRACT: EXCEPTIONS CLAUSE IN STEAMSHIP PASSENGER TICKET HELD NOT TO PROTECT COMPANY'S SERVANTS

Adler *v.* Dickson and Another

Denning, Jenkins and Morris, L.JJ. 25th October, 1954

Appeal from Pilcher, J. ([1954] 3 W.L.R. 450; *ante*, p. 592).

A sailing ticket issued to the plaintiff by a shipping company for a Mediterranean cruise contained, *inter alia*, the following conditions: "Passengers . . . are carried at passengers' entire risk" and "The company will not be responsible for and shall be exempt from all liability in respect of any . . . injury whatsoever of or to the person of any passenger . . . whether the same shall arise from or be occasioned by the negligence of the company's servants . . . in the discharge of their duties, or whether by the negligence of other persons directly or indirectly in the employment or service of the company . . . under any circumstances whatsoever . . ." The plaintiff, who was injured when mounting the gangway of the ship at a port of call, brought an action in negligence against the master and boatswain of the ship. A preliminary question was tried whether the defendants were entitled to the protection admittedly afforded to the company by the conditions of the ticket. Pilcher, J., held that the defendants were not protected. The defendants appealed.

DENNING, L.J., said that although Blackburn, J., in 1863 had said that such an exceptions clause was unreasonable, it was clear that it was permitted by law, and served to protect the carriers. It would be easy to decide simply that, as the defendants were not parties to the contract of carriage, they could not claim the benefit of the exception clause, a line of reasoning adopted in *Cosgrove* v. *Horsfall* (1945), 62 T.L.R. 140; but it was said that that case was inconsistent with *Elder Dempster & Co., Ltd.* v. *Paterson Zochonis & Co., Ltd.* [1924] A.C. 522; and further, that in the case of carriage of goods by sea it was well established that an exceptions clause protected not only the shipowners, but the crew, and stevedores, and others engaged in carrying out the services provided for by the contract. The same rule could apply to the carriage of passengers (*Hall* v. *N.E. Railway Co.* (1875), L.R. 10 Q.B. 437), so that in a contract of carriage of passengers a carrier might stipulate for exemption from liability not only for himself but for those whom he engaged to carry out the contract, either by necessary implication or by express words. But the injured party must have assented to such exemptions, either expressly or by necessary implication, and in all cases where the wrongdoer had escaped the injured party had so assented; such assent had not been inferred in *Cosgrove* v. *Horsfall*, *supra*. In the present case, the express terms of the contract did not protect the company's servants; and there was nothing to show that the plaintiff assented to any implied intention to protect them. She was entitled to pursue her action, and the appeal should be dismissed.

JENKINS and MORRIS, L.JJ., agreeing, held that the case was governed by *Cosgrove* v. *Horsfall*, which was not in conflict with the *Elder Dempster* case, *supra*. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *A. A. Mocatta*, Q.C., and *M. Kerr* (*Ince, Roscoe, Wilson & Griggs*); *G. Le Quesne* (*Neil Maclean & Co.*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 696

LIMITATION: PUBLIC AUTHORITY: HOSPITAL SPECIALIST ACTING AS AGENT OF MINISTER OF HEALTH

Razzel *v.* Snowball

Denning, Birkett and Morris, L.JJ. 25th October, 1954

Appeal from Lord Goddard, C.J.

The defendant was a surgeon engaged part-time as a specialist under the National Health Service Act, 1946, s. 3, which places on the Minister of Health the duty "to provide . . . the services of specialists." He performed an operation on the plaintiff at the hospital, and two years later she brought an action against him, alleging negligence in his conduct as a surgeon. On a preliminary point, the surgeon claimed that the proceedings were out of time, since he was "acting in execution or purported execution of a public duty or authority and/or pursuant to the provisions of the National Health Service Act, 1946," and was accordingly protected by the one-year limitation provided by s. 21 (1) of the Limitation Act, 1939.

DENNING, L.J., said that the question was, what was the Minister's duty under the Act? Was it to provide treatment or merely to provide specialists? Reading s. 3 in the light of the other sections of the Act and of the regulations, it was the duty of the Minister to provide all necessary services at the hospitals, by means of doctors and nurses under s. 3 (1) (*b*) and by means of specialists under s. 3 (1) (*c*). The Minister did not discharge his duty merely by appointing competent doctors and nurses and competent specialists. He had not merely to provide the staff but to provide their services; and in as much as their services consisted of treating the sick, it was his duty to treat the sick by means of their services. There could be no doubt that the defendant had been appointed as a specialist to perform the duty which the Act laid on the Minister, namely, to treat the sick by means of specialist services; and that being so, he was simply carrying out the Minister's duty and was protected by s. 21 of the Limitation Act, 1939. The true position had been stated by Lord Goddard, C.J., in the present case when he said that the surgeon was an agent, both of the Minister and of the hospital board. As an agent of a public authority, the defendant was entitled to the protection of the Limitation Act just as the public authority itself. His lordship could not accept the submission for the appellant that a part-time consultant was in a different position from the staff of the hospital. Whatever may have been the position of a consultant in former times, the term "consultant" since the National Health Service Act, 1946, was simply a title denoting his place in the hierarchy of the hospital staff. He, like all the others, was just carrying out the duties of the Minister and was entitled to protection. The appeal should be dismissed.

BIRKETT and MORRIS, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *S. N. Bernstein* (*Walter O. Stein*); *J. R. Cumming-Bruce* (*Hempsons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1382

WRIT: SERVICE ON FOREIGN COMPANY HAVING SUBSIDIARY WITHIN JURISDICTION

Deverall *v.* Grant Advertising, Inc.

Jenkins, Hodson and Romer, L.JJ. 25th October, 1954

Appeal from Vaisey, J.

A purported service of a writ on the defendants, Grant Advertising, Inc., a company incorporated in the United States of America, was made at the office of a subsidiary English company which carried on business in the United Kingdom and which had a place of business or office at 36 Grosvenor Street, London, W.1. The relief claimed by the writ concerned the amounts due, or alleged to be due, to the plaintiff, P. E. Deverall, under an agreement dated 1st February, 1953, whereby, for the consideration therein mentioned, he agreed to resign the office which he had theretofore held for six or seven months as regional director of the American company in the sterling area, and also the offices which he had concurrently held of director and chairman of directors of the English company. The American company applied to have the service of the writ set aside, but Vaisey, J., held that 36 Grosvenor Street was, on the facts of the case, a place of business established by the defendants, the American company, in the United Kingdom and that service could be effected at that office in accordance with the provisions of s. 412 of the Companies Act, 1948, the American company having failed to deliver to the registrar of companies the particulars required by s. 407 of that Act. The defendants appealed.

JENKINS, L.J., said that, on the evidence, the plaintiff had failed to show that the American company had ever established a place of business within the United Kingdom. Even if by reason of the plaintiff's employment and activities at 36 Grosvenor Street the American company had established a place of business within the United Kingdom, it was admitted that from and after the plaintiff's departure the American company no longer had

a place of business within the jurisdiction and service could not be effected in accordance with s. 412 of the Companies Act, 1948, for such service had to be effected at a place of business established by the company and if the company no longer had a place of business established at the place where service was sought to be effected, the language of the section was not complied with. *Sabatier* v. *Trading Company* [1927] 1 Ch. 495 was distinguishable, for there the company had filed with the registrar of companies the name of a person authorised to accept service.

HODSON and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. Hobson* (*Waterhouse & Co.*); *N. Wiggins* (*Parker, Sloan and Pinsent*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 688

ESTATE DUTY: VALUATION OF SHARES IN CONTROLLED COMPANY

In re Hall's Settlement; Sanderson and Others *v.* Inland Revenue Commissioners

Jenkins, Romer and Parker, L.JJ. 28th October, 1954

Appeal from Upjohn, J. ([1954] 1 W.L.R. 1185; *ante*, p. 574).

The deceased, Harold Hall, was the owner of some 2,951 shares in a private limited company in which he had a controlling interest. By a voluntary settlement dated 27th July, 1942, the deceased settled 400 of the shares in question on trust for the benefit of his son and daughter. On 30th September, 1943, the settlor died and the settled shares became liable to estate duty by virtue of s. 2 (1) (*c*) of the Finance Act, 1894. By this summons the court was asked to determine whether the value of the shares was to be ascertained under s. 55 of the Finance Act, 1940, or on an open market basis under s. 7 (5) of the Finance Act, 1894. Upjohn, J., held that the shares must be valued in accordance with the provisions of s. 55 of the Act of 1940. The trustees of the voluntary settlement, the plaintiffs, appealed.

JENKINS, L.J., said that the shares were to be valued in accordance with the provisions of s. 55. On the true construction of s. 55 of the Act of 1940, in the opening words of the section: "Where for the purposes of estate duty there pass, on the death of a person after the commencement of this Act, shares . . ." the phrase "for the purposes of estate duty" qualified the words "there pass" and, accordingly, the reference in the section to property passing on a death comprised any kind of passing, actual or notional, which for the purposes of estate duty amounted to a passing which attracted duty. Property which was brought within the ambit of s. 1 of the Finance Act, 1894, because one of the conditions in s. 2 of that Act applied to it was in the same case for purposes of estate duty as property passing by virtue of s. 1. Therefore, references in provisions relating to the valuation of property for estate duty purposes, the assessment of the duty payable and the accountability for it to property passing on a death would include property which was deemed to pass on the death.

ROMER and PARKER, L.JJ., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: *F. N. Bucher* and *J. A. Armstrong* (*Peacock and Goddard*, for *Sanderson & Co.*, Hull); *B. L. Bathurst*, Q.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R 675

CHANCERY DIVISION

WILL: ANNUITY: WHETHER A CONTINUING CHARGE ON INCOME

In re Cameron, deceased; Currie *v.* Milligan

Roxburgh, J. 21st October, 1954

Originating summons.

A testator, who died in 1929, by cl. 12 of his will directed his trustees to pay to his widow one-third of the income of his residuary trust fund and "if one-third of the income of the trust fund shall in any year during the life of my said wife amount to less than £6,500 per annum free of English income and super-tax my trustees shall in respect of that year pay or cause to be paid to my said wife out of the income of the trust fund in addition to one-third of the income thereof such further sum as will give to her a net income for that year of £6,500 free of English income and super-tax." By cl. 13 the testator directed that "subject to the interest of my said wife in part of the income of the trust fund under the last preceding clause hereof" his trustees should hold the income of the trust fund on certain trusts. Although the estate was of considerable value, difficulties arose in the administration of the trust fund, as a result of subsequent legislation increasing the rates of income tax and sur-tax. Owing to the insufficiency of the income since the year 1938 to produce the net sum required, the executor took out a summons for the direction of the court as to the manner in which the terms of the will in relation to the annuity should be carried out.

ROXBURGH, J., said that the testator, who died in 1929, had never contemplated the possibility that the income in any particular year could fall short of the sum provided for the widow, so that the words must be strictly construed. The effect of *In re Coller's Deed Trusts* [1939] Ch. 277 was that if there was a continuing charge on income, the annuitant had a charge on each and every part of the income, and nobody, strictly speaking, could during the life of the annuitant have anything without her consent; so that any direction in the instrument creating the charge which was inconsistent with such a right indicated that the annuity was not meant to be so charged. Having regard to the extraordinary incidence of a continuing charge, the court would be slow to find one except in a very clear case. On the construction of the language of cl. 12, by itself, it appeared, on the whole, that there should be implied the limitation of the income to the income of a particular year. But the matter was concluded by the opening words of cl. 13 "Subject to the interest of my said wife in part of the income of the trust fund." An interest in part of the income was quite inconsistent with the fuller rights of an annuitant under a continuing charge.

Declarations accordingly.

APPEARANCES: *H. A. Rose; W. T Elverston; W. A. Bagnall; O. Swingland* (*Johnson, Jecks & Landons; Elvy Robb & Co.; Lee, Bolton & Lee*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1375

PROFITS TAX: PRINCIPAL COMPANY ITSELF EXEMPT: SUBSIDIARY COMPANY NOT LIABLE

Heelex Investments, Ltd. *v.* Inland Revenue Commissioners

Upjohn, J. 21st October, 1954

Case stated by special commissioners.

The Finance Act, 1937, provides by s. 22: "(1) Where a body corporate resident in the United Kingdom is a subsidiary of another body corporate so resident (hereinafter . . . referred to as 'the principal company') the principal company may, by notice in writing . . . require that the provisions of subs. (2) of this section shall apply to the subsidiary . . . (2) Where such a notice is given, the profits or losses arising . . . from the trade or business carried on by the subsidiary shall be treated for the purpose of the provisions of the Act relating to [profits tax] . . . as if they were profits or losses . . . from the trade or business carried on by the principal company." The Finance Act, 1947, provides by s. 31 (2) that the principal charging section of the Act of 1937 "shall not apply to any trade or business carried on by a body corporate . . . if . . . the actual income of the body corporate . . . is apportioned under . . . s. 21 of the Finance Act, 1922 . . ." The appellant company, *H*, Ltd., was a subsidiary company of *S*, Ltd. In September, 1948, *S* gave a notice, which was accepted, to the Inland Revenue Commissioners under s. 22 of the Finance Act, 1937, requiring that the profits of *H* should be treated as the profits of *S*, the principal company, for the purposes of profits tax. By a notice given in September, 1952, the commissioners directed that the income of *S* should be deemed to be the income of the members and apportioned accordingly, pursuant to s. 21 of the Finance Act, 1922. In consequence, by virtue of s. 31 (2) of the Finance Act, 1947, the income of *S* became exempt from liability for profits tax. Subsequently assessments, which were disputed, were made on *H* for profits tax in relation to the profits for the chargeable accounting periods ending in 1948 and 1949. It was contended for the taxpayers that the effect of the notices given by *S* to the commissioners in 1948 and by the commissioners to *S* in 1952 was that (*a*) the liability of *H* to profits tax was transferred to *S*; (*b*) *S* had ceased to be liable to profits tax, so that (*c*) *H* was not liable for the tax. The Crown contended that there was an inherent assumption underlying s. 22 of the Act of 1937 that *S*, the principal company, must be liable for profits tax, and that if *S* was not so liable, the section was inoperative. The special commissioners affirmed the assessments.

UPJOHN, J., said that a similar question relating to corporation profits tax had been canvassed *obiter* in the House of Lords in

I.R.C. v. *Birmingham District Power and Traction Co., Ltd.* (1928), 141 L.T. 1. Lord Buckmaster expressed the view that a principal company which was itself exempt from the relevant tax could not give a notice requiring the profits of its subsidiaries to be treated as its own profits, but Lord Wrenbury and Lord Warrington disagreed, and refused to import any assumptions into the relevant statutory provisions. With all respect to the view of Lord Buckmaster, it seemed wrong in a taxing statute to import any underlying assumption or inherent idea unless the words of the statute compelled such a course. In the present case the statutory language was quite plain. To adopt the assumption contended for by the Crown would be to place a restriction on the meaning of "principal company." On the plain words of the Act any principal company could give a notice; thereupon, for the purpose of the Act, the profits of the subsidiaries were to be treated as the profits of the principal. If, for one reason or another, the principal was exempt, no liability for profits tax could arise. The assessments had been wrongly made, and must be discharged. Appeal allowed.

APPEARANCES: *L. C. Graham-Dixon*, Q.C., and *J. Creese* (*Titmuss, Sainer & Webb*); *G. Cross*, Q.C., and *Sir R. Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1368

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: MEANING OF "PUBLIC COMPANY" IN LARCENY ACT, 1916: CANCELLATION OF DEBT NOT A TRANSFER OF PROPERTY

R. *v.* Davies

Lord Goddard, C.J., Lynskey and Ormerod, JJ.
25th October, 1954

Appeal against conviction.

The Larceny Act, 1916, provides by s. 20: "(1) Every person who—(ii) being a director . . . of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company . . . shall be guilty of a misdemeanour . . ." The managing director of a company registered under the Companies Act, 1948, as a private company was charged *inter alia* under s. 20 (1) (ii), as a "director of a certain public company" with fraudulently converting the property of the public company and applying it to the use of a finance company." The commissioner overruled a defence submission that a private company was not a public company within the meaning of s. 20 (1) (ii) of the Act and the appellant was convicted. A further count of the indictment alleged that the appellant "being a director of a company which subsequently passed a resolution for voluntary winding up, did with intent to defraud creditors of the company attempt to transfer to himself property of the said company, to wit, an indebtedness in the sum of £30,000 then owing by himself to the said company."

LORD GODDARD, C.J., said that, on the first question, any company incorporated under the Companies Acts was a public company for the purpose of the Larceny Act, although certain companies incorporated might rank as private companies and have certain rights accordingly. In *In re Lysaght* [1898] 1 Ch. 115 Lord Lindley, M.R., said that any company registered under the Companies Act, 1862, was a public company within the meaning of the Apportionment Act; and in *In re White* [1913] 1 Ch. 231 Neville, J., had agreed. If a company was a public company for the purposes of the Apportionment Act, it was also a public company for the purposes of the Larceny Act. Private companies needed just the same protection as any other sort of trading company. As to the second question, the cancellation of a debt, whether procured by means honest or dishonest, was in no sense a transfer of property, so that the further count was demurrable as disclosing no offence. Appeal allowed in part.

APPEARANCES: *Viscount Hailsham*, Q.C., and *H. P. B. Dow* (*Ernest W. Long & Co.*); *W. A. L. Raeburn*, Q.C., and *M. Littman* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 664

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read Second Time:—

Expiring Laws Continuance (No. 2) Bill [H.C.] [9th November.

Read Third Time:—

Bank of Scotland Order Confirmation Bill [H.C.] [10th November.
Mines and Quarries Bill [H.C.] [11th November.
Transport Charges &c. (Miscellaneous Provisions) Bill [H.C.] [9th November.

In Committee:—

Town and Country Planning (Scotland) Bill [H.C.] [11th November.

B. QUESTIONS

EPSOM MAGISTRATE AND MOTORISTS

EARL HOWE asked whether the Government was satisfied, in view of a remark reported to have been made on his re-election by the chairman of the Epsom bench of magistrates, that his utterances were such as to ensure the impartial administration of justice for the defendants in motor cases brought before that bench? Did he consider that the expression "speed-crazy hooligans on the road" was worthy of a man holding such an important legal office?

The LORD CHANCELLOR said that the chairman referred to had already taken an opportunity of correcting, by a further statement in court, the misleading impression of his views which his observations on the former occasion seemed to have caused. He asked that the matter might rest there. [10th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Third Time:—

Civil Defence (Armed Forces) Bill [H.L.] [10th November.
Food and Drugs Amendment Bill [H.L.] [11th November.
National Gallery and Tate Gallery Bill [H.L.] [10th November.
Pharmacy Bill [H.L.] [11th November.
Post Office Savings Bank Bill [H.L.] [11th November.
Trustee Savings Banks Bill [H.L.] [11th November.

In Committee:—

Pests Bill [H.L.] [10th November.

B. QUESTIONS

ESTATE DUTY VALUATION (HOUSES)

Mr. R. A. BUTLER said that he was advised that at the present time the premium on vacant possession had virtually disappeared for all classes of houses over a considerable part of North-East, South-East and South-West England and North and South Wales. In most of England and Wales the value of the concession had disappeared for certain classes of houses and not for others. [9th November.

FORMER LORD CHANCELLORS (PENSIONS)

Asked what sum was now being paid to Lord Chancellors in retirement, Mr. R. A. BUTLER said that pensions totalling £8,750 a year were being paid to two former Lord Chancellors. [9th November.

ACQUITTED DEFENDANTS (COSTS)

Mr. BULLARD asked the Home Secretary if he would write to all police authorities requesting them not to pursue a claim for costs in cases in which an accused had been acquitted on a criminal charge. Was he aware of a case in which an acquitted man had, a very long time after the trial, been made bankrupt for police costs?

Major LLOYD GEORGE said he had no authority to intervene in a matter of this kind, which was entirely one for the decision of the police authority concerned, and it would not be appropriate for him to offer any advice to police authorities on the subject. He was, however, prepared to look at any facts submitted to him. [11th November.

MAGISTRATES' COURT, LYDNEY (PUPILS' VISIT)

Sir DAVID ECCLES said that visits by sixth form pupils to magistrates' courts were quite common as part of a course of social studies, and local education authorities and schools which arranged them were aware of the importance of ensuring that the pupils did not hear unsuitable cases. In his opinion it had been an error of judgment that certain pupils had attended the hearing of a murder charge, the headmaster of the school being one of the examining magistrates. [11th November.

WATT *v.* KESTEVEN COUNTY COUNCIL

Sir David Eccles refused to issue fresh directions, in view of the judgment in *Watt* v. *Kesteven County Council*, to local authorities in regard to children who qualified for secondary grammar school education and whose parents wished them to go to Roman Catholic schools. [11th November.

VISITING FORCES (AFFILIATION ORDERS)

Asked what progress had been made with the proposed arrangements to persuade members of visiting forces who had returned to their own country to comply with affiliation orders, Mr. TURTON stated that the United States service authorities, like our own, were unable to take disciplinary action for failure to comply with foreign affiliation orders. Discussions had made it clear that there was at present no prospect of amendment to the United States service statutes in this respect. [11th November.

STATUTORY INSTRUMENTS

Accrington (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1451.)

Coal Industry Nationalisation (Borrowing Powers) Order, 1954. (S.I. 1954 No. 1456.)

Defence Regulations (No. 7) Order, 1954. (S.I. 1954 No. 1478.)

Defence Regulations (No. 8) Order, 1954. (S.I. 1954 No. 1479.)

Defence Regulations (No. 9) Order, 1954. (S.I. 1954 No. 1480.) 5d.

The No. 7 and No. 8 Orders came into operation on 10th November. The former revokes Defence Regulation 56A and its related Schedule (control of building) and the latter revokes regs. 2 and 3 (3) (4) of the Defence (Patents, Trade Marks, etc.) Regulations, 1941. The No. 9 Order becomes operative on 1st January, 1955, and amends and restricts the powers existing under Defence Regulations 55, 55AA and 55AB.

Devon River Board (Contributions in respect of Several Fisheries) Order, 1954. (S.I. 1954 No. 1449.) 6d.

Devon River Board Transfer Order, 1954. (S.I. 1954 No. 1446.) 5d.

Industrial Diseases (Miscellaneous) Benefit Scheme, 1954. (S.I. 1954 No. 1443.) 8d.

Insurance Contracts (War Settlement) (Finland) Order, 1954. (S.I. 1954 No. 1464.) 5d.

Insurance Contracts (War Settlement) (Italy) Order, 1954. (S.I. 1954 No. 1463.) 6d.

International Organisations (Immunities and Privileges of the Customs Co-operation Council) Order, 1954. (S.I. 1954 No. 1468.) 6d.

International Organisations (Immunities and Privileges of the European Payments Union) Order, 1954. (S.I. 1954 No. 1472.)

International Organisations (Immunities and Privileges of the International Civil Aviation Organisation (Amendment No. 2)) Order, 1954. (S.I. 1954 No. 1465.)

International Organisations (Immunities and Privileges of the International Sugar Council) Order, 1954. (S.I. 1954 No. 1473.)

Merchant Shipping (Load Line Convention) (Various Countries) Order, 1954. (S.I. 1954 No. 1461.)

Merchant Shipping (Safety Convention Countries) (Various) (No. 3) Order, 1954. (S.I. 1954 No. 1462.)

Merthyr Tydfil (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1486.)

Milk Distributive Wages Council (Scotland) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 1490.) 5d.

National Health Service (Bute and Cumbrae Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1498 (S. 166).) 6d.

National Health Service (Campbeltown and District Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1491 (S. 163).) 6d.

National Health Service (Falkirk and District Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1501 (S. 167).) 6d.

National Health Service (Isle of Arran Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1497 (S. 165).) 6d.

National Health Service (Kirkintilloch and Kilsyth Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1502 (S. 168).) 6d.

National Health Service (Oban and District Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1492 (S. 164).) 6d.

National Health Service (Stirling and Clackmannan Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1503 (S. 169).) 6d.

National Health Service (Travelling Allowances, etc.) (Scotland) (Amendment No. 2) Regulations, 1954. (S.I. 1954 No. 1447 (S. 161).)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations, 1954. (S.I. 1954 No. 1442.) 5d.

Official Secrets (Prohibited Place) (No. 2) Order, 1954. (S.I. 1954 No. 1482.)

Parish Council Election Rules, 1954. (S.I. 1954 No. 1483.)

Petty Sessional Divisions (Essex) Order, 1954. (S.I. 1954 No. 1458.) 6d.

Petty Sessional Divisions (Shropshire) (No. 3) Order, 1954. (S.I. 1954 No. 1481.) 5d.

Pneumoconiosis and Byssinosis Benefit Amendment Scheme, 1954. (S.I. 1954 No. 1444.) 6d.

Renfrew County Council (Calder Valley) Water Order, 1954. (S.I. 1954 No. 1460 (S. 162).) 5d.

Retention of Cables, Main and Pipe under Highway (Ross and Cromarty) (No. 4) Order, 1954. (S.I. 1954 No. 1488.)

Retention of Pipe under Highway (Orkney) (No. 3) Order, 1954. (S.I. 1954 No. 1455.)

Rotherham (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1450.)

Rural District Council Election Rules, 1954. (S.I. 1954 No. 1484.)

Somerset River Board (Fisheries) Order, 1954. (S.I. 1954 No. 1457.)

Stopping up of Highways (Bolton) (No. 1) Order, 1954. (S.I. 1954 No. 1494.)

Stopping up of Highways (Canterbury) (No. 1) Order, 1954. (S.I. 1954 No. 1438.)

Stopping up of Highways (Derbyshire) (No. 8) Order, 1954. (S.I. 1954 No. 1441.)

Stopping up of Highways (Flintshire) (No. 2) Order, 1954. (S.I. 1954 No. 1453.) 5d.

Stopping up of Highways (Gloucestershire) (No. 6) Order, 1954. (S.I. 1954 No. 1454.) 5d.

Stopping up of Highways (Lincolnshire–Parts of Kesteven) (No. 2) Order, 1954. (S.I. 1954 No. 1487.)

Stopping up of Highways (Northumberland) (No. 5) Order, 1954. (S.I. 1954 No. 1452.)

Stopping up of Highways (Staffordshire) (No. 7) Order, 1954. (S.I. 1954 No. 1493.)

Stopping up of Highways (West Riding of Yorkshire) (No. 8) Order, 1954. (S.I. 1954 No. 1440.)

Stopping up of Highways (Worcestershire) (No. 7) Order, 1954. (S.I. 1954 No. 1439.)

Urban District Council Election Rules, 1954. (S.I. 1954 No. 1485.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

Mr. ELIOT ANDREWS, deputy town clerk at Ashton-under-Lyne, Lancs, since 1951, has been appointed clerk of Bridport Rural District Council in succession to Mr. John Roper, who is to retire after holding the appointment for many years.

Mr. MAURICE E. HOLDERNESS, of Manchester, has been appointed full-time clerk to the Consett, Stanley and Lanchester Petty Sessional Division, in succession to Mr. Herbert Reginald Snowball, the last part-time clerk, who has retired.

POINTS IN PRACTICE

Auction—READING CONDITIONS OF SALE

Q. We are about to offer certain property for sale by auction which is expressed to be subject to certain reservations and restrictive covenants, and the contract contains other matters of material importance to the respective purchasers. It has been suggested to us that it would be sufficient to have the conditions available for inspection at the offices of ourselves and the auctioneers for some days prior to the sale, and in the sale room at the time of sale, and that if this is done there is no necessity to read the conditions at the sale or do other than offer to answer any questions which the company may desire to put. The property is, of course, being sold subject to a well-known form of conditions of sale, and the particulars mention the right to inspect. In your opinion, is this suggestion satisfactory or ought the conditions of sale to be read at the time of auction ?

A. As the contract is to contain matters of material importance to purchasers we do not think it would be sufficient merely to offer to answer questions. One must bear in mind that there can be no enforceable contract until a memorandum is signed. The contract might be firm, therefore, if the contents of it were adequately brought to the notice of the highest bidder before he signed (assuming he will sign in person). We would think, however, that there might be grave difficulty in explaining after bidding if it was not done before. We are not aware of any binding obligation to read conditions of sale. It is, of course, customary to read special ones and to refer to general ones incorporated by means of standard forms, such as The Law Society's or the National Conditions. The rule is that particulars and conditions must be brought to the notice of bidders (*Mesnard* v. *Aldridge* (1801), 3 Esp. 271 ; *Re Hare & O'More's Contract* [1901] 1 Ch. 93). As the existence of special conditions must be brought to notice we do not see how anything material is to be gained by doing other than reading them.

Appointment of New Trustee—DEATH OF ADMINISTRATOR OF LAST SURVIVING TRUSTEE—WHETHER STATUTORY POWER EXERCISABLE BY EXECUTOR OF ADMINISTRATOR

Q. Property became vested on 1st January, 1926, in two trustees for sale holding on the statutory trusts. The surviving trustee died on 2nd January, 1940, and letters of administration (with the will annexed) were granted on 20th August, 1940, to *A* and *B*. *A* died in 1943 and *B* on 1st September, 1949. Probate of *B's* will was granted to *X* and *Y* on 5th September, 1950. On 16th October, 1951, *X* and *Y* as personal representatives of *B* appointed new trustees of the statutory trusts. There is (*a*) no chain of representation because of the intestate grant ; (*b*) no assent or appointment by *A* and/or *B*, the personal representatives of the last surviving trustee. The appointment is made under s. 36 of the Trustee Act, 1925. Is the appointment good under s. 36 of the Trustee Act, 1925 ? Does s. 18 of the Trustee Act, 1925, extend to *X* and *Y* and similarly with s. 36 ? Did the trust property vest in *X* and *Y* under the Administration of Estates Act, 1925 ? Does a personal representative acting under s. 18 become a trustee under s. 36 ?

A. We find it hard to see that the appointment under s. 36 of the Trustee Act, 1925, is good, although we have not been able to trace any authority dealing exactly with the point in question. Section 18 of the Trustee Act, 1925, says that the personal representative of a last surviving or continuing trustee shall be capable of exercising the powers of such trustee ; it does not say that such personal representative shall be, or be deemed to be, a trustee. Such a distinction appears to have been recognised in *Re Smith* [1904] 1 Ch. 139, and *Re Harding* [1923] 1 Ch. 182. Further, the power of appointment is specifically referred to as being exercisable under s. 36 by the executors, whether original or by representation, or the administrators for the time being of the surviving trustee, none of which descriptions fits *X* or *Y*. We do not consider that ss. 1 and 3 of the Administration of Estates Act, 1925, assist, since *X* and *Y* are not the personal representatives of the last surviving trustee, who died in 1940.

Rent Restriction—STATUTORY TENANCY TRANSMITTED TO SON AND DAUGHTER OF TENANT—DEATH OF SON

Q. A man dies a statutory tenant of a dwelling-house within the compass of the Rent Acts, leaving a son and daughter only in the house. The son is the elder of the two. Both are unmarried and have lived in the house all their lives. Neither of them makes a specific claim for a transmitted tenancy either to the landlord or the court, and no action is taken by the landlord except to cross out the deceased tenant's name on the rent book and insert the words " Represent Mr. *X*, deceased." The landlord states that he never gave any thought as to which of the two he regarded as the " transmitted tenant." The son has now died and the landlord inquires whether he can evict the daughter. Apparently this can only be done if the court can be urged to regard the son as the " transmitted tenant." Is there any chance of this and so securing the daughter's eviction ? Would the daughter be able to argue that she and her brother agreed that she was to be the " transmitted tenant," or in the absence of any communication of this agreement to the landlord would she be estopped ?

A. In our opinion, the landlord's chance of obtaining an order for possession is somewhat slight. If the son and daughter did consider the legal position, as he did not, there is nothing in the statute to oblige them to communicate their decision to him. If the daughter did plead such an agreement between her and her brother as is apprehended, it may be that her evidence would not be accepted : e.g., if the landlord could prove that the rent in fact came out of the brother's pocket, the sister keeping house for him. But even if she did not put forward such a plea, the plural " represent " might place the landlord in a difficulty. That is to say, it might be held that he had in effect granted a joint contractual tenancy to the brother and sister, the sister now being entitled to it as survivor. It is true that he had no intention of creating such a tenancy, but his mistake was one of law rather than of fact.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

Mr. RICHARD KENNETH DENBY, solicitor, of Bradford, has been appointed deputy coroner of Bradford.

The Attorney-General has appointed Mr. E. G. WRIGHT to be conveyancing counsel to the Ministry of Agriculture and Fisheries and the Commissioners of Crown Lands, and conveyancing counsel to the Forestry Commissioners, in succession to Mr. E. B. Stamp.

Personal Note

Mr. Arthur John Albert Orme, chief clerk to Bristol City magistrates since 1934, is to retire early next year.

Miscellaneous

DEVELOPMENT PLANS

COUNTY OF DURHAM DEVELOPMENT PLAN

(A) *Shildon Town Map*

(B) *Whickham Town Map*

The above town maps, prepared as part of the above development plan, were, on 9th November, 1954, submitted to the Minister of Housing and Local Government for approval. The town maps relate to land situate within the urban districts of (*a*) Shildon, and (*b*) Whickham. Certified copies of the town maps, as submitted for approval, have been deposited for public inspection at the County Planning Office, 10 Church Street,

Durham. Certified copies of the town maps have also been deposited for public inspection as follows: (*a*) Shildon town map—Urban District Council Offices, Burke Street, Shildon; (*b*) Whickham town map—Urban District Council Offices, Whickham. The copies of the town maps so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the town maps may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st December, 1954, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the office of the Clerk of the Council, Shire Hall, Durham, and will then be entitled to receive notice of the eventual approval of the town maps.

COUNTY BOROUGH OF DEWSBURY DEVELOPMENT PLAN

Copies of the development plan (including the written statement) for the County Borough of Dewsbury, as approved by the Minister of Housing and Local Government, are available for sale to any member of the public, price £1 1s., plus postage. Applications for copies should be sent to: The Borough Architect and Buildings Surveyor, Town Hall, Dewsbury, Yorkshire.

OXFORDSHIRE COUNTY COUNCIL DEVELOPMENT PLAN

On 4th November, 1954, the Minister of Housing and Local Government approved, with modifications, the above development plan. Certified copies of the plan as approved by the Minister have been deposited at the offices of the Clerk of the Council, in the County Hall, Oxford, and at the offices of the County Planning Officer, at Park End Street Offices, Oxford, and certified extracts of the plan, so far as it relates to the undermentioned districts, have also been deposited at the places mentioned below: Borough of Banbury—the office of the Town Clerk, Municipal Buildings, Banbury; Banbury Rural District—the office of the Clerk, Bodicote House, near Banbury: Borough of Chipping Norton—the office of the Town Clerk, The Guildhall, Chipping Norton; Chipping Norton Rural District—the office of the Clerk, Hillside, Albion Street, Chipping Norton; Borough of Woodstock—the office of the Town Clerk, Town Clerk's Office, Woodstock; Witney Urban District—the office of the Clerk, Council Offices, 26 Church Green, Witney; Witney Rural District—the office of the Clerk, 14 The Hill, Witney; Bicester Urban District—the office of the Clerk, Council Offices, The Garth, Bicester; Ploughley Rural District—the office of the Clerk, Waverley House, Bicester; Thame Urban District—the office of the Clerk, Town Hall, Thame; Bullingdon Rural District—the office of the Clerk, Arlington House, 76 Banbury Road, Oxford; Borough of Henley-on-Thames—the office of the Town Clerk, 33 Market Place, Henley-on-Thames; Henley Rural District—the office of the Clerk, Easby House, Northfield End, Henley-on-Thames. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9.30 a.m. and 5 p.m. on every weekday except Saturday, when they may be inspected between the hours of 9.30 a.m. and 12 noon. The plan became operative as from 9th November, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 9th November, 1954, make application to the High Court.

COUNTY BOROUGH OF SOUTHAMPTON DEVELOPMENT PLAN

Comprehensive Development Area No. 3—Central Area

With reference to the notice at p. 688, *ante*, relating to the submission of the above development plan to the Minister of Housing and Local Government: The date therein stated for the submission of objections or representations has been postponed from 15th November, 1954, to a date to be determined after the County Borough of Southampton Development Plan has been approved by the Minister. All objections and representations already made will be retained and considered by the Minister and no further communication need be sent to the Minister of Housing and Local Government thereon.

INSURANCE CONTRACTS, ITALY AND FINLAND

Her Majesty in Council has made the Insurance Contracts (War Settlement) (Finland) Order, 1954, and the Insurance Contracts (War Settlement) (Italy) Order, 1954, which came into operation on 19th November, 1954. These Orders, which are made under the Insurance Contracts (War Settlement) Act, 1952, give effect respectively to an Agreement (Cmd. 7886, H.M. Stationery Office, price 4d.) relating to insurance and reinsurance contracts made before the last war which was made on 28th December, 1949, between his late Majesty's Government and the Government of Finland and to a similar Agreement (Cmd. 9211, H.M. Stationery Office, price 3d.) made on 1st June, 1954, between Her Majesty's Government and the Government of Italy.

A Special University Lecture in Laws on "Recent American Tendencies in Jurisprudence" will be given by Professor Jerome Hall, Ph.B., J.D., Jur.Sc.D., S.J.D., Professor of Law in the University of Indiana, at King's College, Strand, W.C.2, at 5 p.m. on Thursday, 2nd December, 1954. The chair will be taken by Professor R. H. Graveson, LL.D., S.J.D., Professor of Law in the University of London. The lecture is addressed to students of the University of London and to others interested in the subject. Admission is free and without a ticket.

Wills and Bequests

Mr. E. G. Potter, solicitor, of Walsall, left £12,865 (£12,457 net).

OBITUARY

MR. C. A. FREEMAN

Mr. Charles Arthur Freeman, solicitor, of Lincoln's Inn and Norwood, S.E.19, died recently, aged 88. He was admitted in 1891.

MR. B. D. J. HAYES

Mr. Bernard Damian Joseph Hayes, solicitor, of Shrewsbury, died on 24th October, aged 64. He was admitted in 1914.

MR. I. G. LANDAU

Mr. Isaac Gedaliah Landau, retired solicitor, of London, E.C.3, died on 12th November, aged 80. In 1905 he became a member of the Board of Deputies of British Jews. He was a member of the central executive body of the United Synagogue of London and from 1930 to 1949 was president of the London Board of Shechita. He was also a member of the Sunday Trading Appeals Tribunal.

MR. E. PECK

Mr. Ernest Peck, solicitor, of Long Eaton, Castle Donington and Derby, died recently, aged 44. He was deputy clerk to the Castle Donington Parish Council and deputy solicitor to the Rural Council. He was admitted in 1946.

MR. G. W. SHERSBY

Mr. George William Shersby, retired solicitor, of Worthing, died on 24th October, aged 63. He was admitted in 1934.

MR. T. H. TERRY

Mr. Thomas Henry Terry, retired solicitor, died on 19th October, aged 85.

"THE SOLICITORS' JOURNAL"

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